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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.6227 of 1989
Date of decision: 7.3.2007

M/s Singla Rice and General Mills, Kurukshetra

...Petitioner

Versus

The Assessing Authority-cum-Excise and Taxation Officer,

Kurukshetra

...Respondent

CORAM:HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.R.S.Mittal, Senior Advocate with
Mr.Atul Gaur, Advocate for the petitioner.
Ms.Ritu Bahri, Senior Deputy Advocate General, Haryana.

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RAJESH BINDAL, J.

The prayer made in the present petition is for quashing order dated 13.3.1989 Annexure P-5 whereby respondents have denied grant of interest to the petitioner on account of delay in issue of refund voucher.

Briefly, the facts, as stated in the petition, are that the assessment of the petitioner for the year 1977-78 was framed by the Assessing Officer whereby certain demand was raised, inter-alia, on account of charging tax on sale of rice, under Levy Scheme, to the State Government. The order of assessment was set aside in appeal and the matter was remitted back to the Assessing Authority for de-novo assessment on the limited issues as discussed in order dated March 24, 1988 passed by the appellate authority. After remand, the assessment was again framed by the Assessing Authority vide order dated September 30, 1988. In the order of assessment, a sum of Rs. 40,281/- was found to be excess paid tax and it was mentioned in the order of assessment that refund

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adjustment voucher for Rs. 40,281/- be issued along with order of assessment. The refund voucher having not been issued, the petitioner prayed for the same vide application dated January 24, 1989. Thereafter, on May 15, 1989, respondent issued refund adjustment order for Rs. 40,281/-. However, the claim for interest on account of delayed refund was declined.

In response to the writ petition, the respondent has filed written statement objecting to the relief claimed by the petitioner. It is stated that as per the provisions of Rule 35 of the Haryana General Sales Tax Rules, 1975 (for short 'the Rules'), the petitioner was required to apply for grant of refund of excess amount to the Assessing Authority. As the petitioner had applied for the refund on February 22, 1989, the refund adjustment order was issued on April 6, 1989 and the voucher was delivered to the petitioner on May 15, 1989 i.e. within a period of 90 days as contemplated under the Act. Accordingly, the petitioner is not entitled to any interest on the delayed refund of the excess amount paid.

I have heard learned counsel for the parties and perused the paper book.

As far as the plea of the petitioner to claim interest from the date of deposit of amount in question, the same has to be noticed and rejected at the threshold. There is no provision under the Act which provides for the grant of relief as claimed by the petitioner. This Court in **Hari Chand Ramesh Kumar Vs. State of Haryana and others, (2004) 136 STC 508** has already negatived such plea raised on behalf of the assessees, where vires of Rule 35(1) (b) of the Rules was in question.

As far as the claim of the petitioner with regard to interest on account of delayed payment of amount of refund after passing of the assessment order in remand proceedings, whereby excess paid amount of tax was ordered to be refunded, I find merit in the submission of the learned Senior Counsel appearing for the petitioner.

Relevant provisions of Rule 35 of the Rules, as existed at the relevant time, are extracted below:-

"**RULE 35**

Refund :-[Section 43]- (1)(a) While framing the assessment of

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a dealer, the assessing authority shall, after such scrutiny of its record and after making such enquiries as it considers necessary, determine the amount paid by him, in excess, if any, and thereafter direct the refund of such amount as may remain after deducting any amount due from him. The assessing authority shall then issue to the dealer at his option a refund payment in form S.T.R. 34 prescribed under the Punjab Subsidiary Treasury Rules or refund adjustment order in form S.T.34 and send it along with the assessment order.

(b) Where a refund of any amount paid by any dealer or other person becomes payable as a result of the order of any appellate or revisional authority or any court and the same is not the subject-matter of any further proceedings, the dealer or such other person shall make an application to the assessing authority concerned alongwith the original order or the copy thereof duly attested by the dealer, which constitutes the basis for refund. The assessing authority shall order the refund of excess amount in the manner specified in clause (a) within [forty five days] of the receipt of such application, failing which interest shall be payable to the dealer or other person at the rate specified in sub-section (5) of Section 25 of the Act, unless the Commissioner for reasons to be recorded in writing condones the delay."

(c) XXX XXX XXX

Sub Rule (1) (a) of Rule 35 of the Rules provides that the amount of refund, if any, determined in the assessment proceedings has to be sent alongwith assessment order in the form of refund payment order or refund adjustment order, at the option of the assessee. There is no requirement for submission of an application therefor. This Court has already taken this view in **Sneh Builders (P) Ltd. Vs. State of Haryana and another (2002) 125 STC 32, M/s Khem Ram Devi Sahai Vs. State of Haryana and another (2004) 23 Punjab and Haryana Taxes 330** and **Civil Writ Petition No.19906 of 2005** titled as **M/s Muni Roller Flour**

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Mills (P) Ltd. Vs. State of Haryana etc. decided on May 25, 2006. The application is required to be filed for issue of order where amount of refund is the result of an order passed by the Appellate/Revisional Authority or of any Court as is provided for under Rule 35(1)(b) of the Rules. The present case is not covered under these provisions. In the present case, the amount of refund of Rs. 40,281/- having been determined in the assessment proceedings, vide order dated September 30, 1988 and the refund voucher having been prepared on April 6, 1989 and delivered to the petitioner on May 15, 1989, petitioner would be entitled to get interest on the delayed refund of the amount. Accordingly, the writ petition is allowed and the respondent is directed to pay statutory interest to the petitioner on account of delayed issue of refund voucher for the period from October 1, 1988 to March 31, 1989.

The writ petition is disposed of in the manner indicated above.

March 07,2007 **(Rajesh Bindal)**
Pka **Judge**

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